



**ISSUES**

The claimant saw Theodore A. Moeller, Ph.D., on six occasions for psychotherapy between January 25, 1999, and March 15, 1999. The charges for those six sessions totaled \$660. In accordance with the provisions of K.S.A. 44-512a, on August 20, 1999, claimant sent a demand to the respondent and its attorney requesting Dr. Moeller's bill be paid or appropriate statutory penalties would be requested. Respondent refused to pay Dr. Moeller's bill. Thereafter, on September 24, 1999, claimant filed an Application for Assessment of Penalties.

Claimant's application was heard by the Administrative Law Judge on October 28, 1999. In an Order dated November 1, 1999, that is the subject of this appeal, the Administrative Law Judge denied claimant's request to order the respondent to pay Dr. Moeller's bill as an authorized medical expense and also denied claimant's request for penalties.

On appeal, the claimant asks the Appeals Board to reverse the Administrative Law Judge and order Dr. Moeller's bill paid as an authorized medical expense and to assess penalties against the respondent. Claimant contends John H. Weninger, M.D., was appointed by the Administrative Law Judge as claimant's authorized treating physician. Therefore, claimant argues Dr. Weninger had the authority to refer claimant to Dr. Moeller for treatment of claimant's pre-existing psychological problems that claimant claims were aggravated by her physical work-related injuries.

Conversely, respondent contends the Appeals Board should affirm the Administrative Law Judge's Order because Dr. Weninger was not authorized to refer claimant for psychological treatment. Respondent also argues that claimant's attorney was notified by respondent in a letter dated January 21, 1999, that Dr. Moeller was not authorized by respondent to provide psychological treatment for the claimant. Thus, respondent argues that notice terminated Dr. Weninger's authority to refer claimant to Dr. Moeller.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board has jurisdiction to review an order on an application for assessment of penalties because it is a final order.<sup>1</sup>

In the preliminary hearing Order dated December 4, 1998, the Administrative Law Judge appointed claimant's family physician, John H. Weninger, M.D., as claimant's

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<sup>1</sup>See Waln v. Clarkson Constr. Co., 18 Kan. App. 2d. 729, 731, 861 P.2d 1355 (1993).

authorized treating physician for all treatment, tests, and referrals, except referrals to rehabilitation hospitals. In that same Order, the Administrative Law Judge ordered an independent medical examination of claimant with psychiatrist Dr. Elsie Steelberg. This doctor was appointed for diagnosis, opinion on causation, and treatment recommendations in reference to claimant's psychological condition.

Before the December 3, 1998, preliminary hearing and the subsequent preliminary hearing Order, Dr. Weninger had referred claimant to psychologist, Theodore A. Moeller, Ph.D. After Dr. Moeller reviewed claimant's previous medical treatment records and had claimant complete psychological testing, in a report dated December 2, 1998, he concluded claimant's work-related physical injury had aggravated her pre-existing depressive disorder. He recommended claimant begin a course of behaviorally oriented psychotherapy.

After Dr. Weninger was appointed as claimant's authorized treating physician on December 4, 1998, he again referred claimant for treatment of her psychological problems to Dr. Moeller. In a letter dated January 11, 1999, Dr. Weninger indicated claimant was not making any substantial improvement with her emotional health problems. The doctor recommended claimant undergo psychotherapy under the direction of Dr. Moeller. The respondent did not consider Dr. Weninger's referral of claimant for psychological treatment as authorized. In a letter dated January 21, 1999, respondent's attorney specially notified claimant's attorney that Dr. Moeller was not authorized to provide claimant with psychological treatment.

The Appeals Board finds the Administrative Law Judge's November 1, 1999, Order should be reversed as the Order relates to the denial of payment of Dr. Moeller's \$660 psychotherapy treatment bill and penalties. The Appeals Board concludes the Administrative Law Judge's December 4, 1998, preliminary hearing Order's language is clear and unambiguous that Dr. Weninger was appointed claimant's authorized treating physician for "all treatment, tests, and referrals, except referrals to rehabilitation hospitals."<sup>2</sup> The Appeals Board is mindful the preliminary hearing Order also ordered the appointment of a psychiatrist to conduct an independent medical examination of claimant. But the Appeals Board finds, if the Administrative Law Judge intended for Dr. Weninger not to be authorized to make referrals for treatment of claimant's psychological problems, then the Order should have specifically spelled out that exception. The Appeals Board concludes, under these circumstances, it was reasonable for the claimant and Dr. Weninger to conclude the referral to Dr. Moeller was authorized.

Respondent also argues that it had the authority to withdraw and terminate the referral authority of the authorized treating physician. Thus, the respondent contends the letter dated January 21, 1999, sent to claimant's attorney, withdrew Dr. Weninger's authority to appoint Dr. Moeller. The Appeals Board disagrees and finds the employer's insurance

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<sup>2</sup> See December 4, 1998, preliminary hearing Order, finding number four.

carrier, even acting in the place of the employer, cannot disapprove medical treatment approved by the authorized treating physician.<sup>3</sup> In Matney, the referring physician had been authorized voluntarily by the respondent's insurance carrier. In this case, Dr. Weninger was specifically authorized as the treating physician, including all referrals, by the Administrative Law Judge's Order. The only recourse for respondent to have Dr. Weninger's referral disapproved was to have the Administrative Law Judge either amend or clarify the Order. This was not done. Accordingly, the respondent is ordered to pay Dr. Moeller's bill for psychotherapy in the amount of \$660.

K.S.A. 44-512a grants a penalty in the amount equal to \$25 or 10 percent of any medical bill which is past due if unpaid after service of written demand for payment. Therefore, respondent is ordered to pay a penalty to the claimant in the amount of \$66.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' November 1, 1999, Order should be reversed, and respondent is ordered to pay Dr. Moeller's bill in the amount of \$660.00 and to pay claimant a penalty in the amount of \$66.00.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Gary A. Winfrey, Wichita, KS  
Clifford K. Stubbs, Lenexa, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director

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<sup>3</sup> See Matney v. Matney Chiropractic Clinic, P.A., 26 Kan. App. 2d 69, 73, 977 P.2d 962 (1999).